**Jax Mold & Machine, Inc. *and* Aluminum Workers International Union, AFL-CIO.** Cases 10-CA-13946, 10-CA-14956-1, and 10-CA-14956-2

April 14, 1981

## DECISION AND ORDER

On September 16, 1980, Administrative Law Judge William N. Cates issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a brief in support thereof, and the General Counsel filed an answering brief. The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Jax Mold & Machine, Inc., Decatur, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(l):

"(l) Withholding wage increases from its employees because of their membership in and activities on behalf of the Union."

2. Substitute the following for paragraph 1(m):

"(m) Discharging employees or otherwise discriminating against them in any manner with respect to their tenure of employment or any term or condition of employment because they engaged in activity on behalf of Aluminum Workers International Union, AFL-CIO, or any other labor organization."

3. Substitute the attached notice for that of the Administrative Law Judge.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

After a hearing at which all sides had the opportunity to present their evidence the National Labor Relations Board has found that we violated the National Labor Relations Act, and has ordered us to post this notice and to comply with its provisions.

The Act gives all employees these rights:

To engage in self-organization

To form, join, or help a union

To bargain collectively through a representative of your own choosing

To act together for collective bargaining or other mutual aid or protection

To refrain from any or all of these things.

WE WILL NOT interrogate our employees concerning their membership in or activities on behalf of, or the membership in or activities of other employees in behalf of, Aluminum Workers International Union, AFL-CIO.

WE WILL NOT threaten our employees with reprisals if they join or engage in activities on behalf of the Union.

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[1] Respondent argues in its exceptions that the Administrative Law Judge erred by refusing to consider relevant evidence which was offered to support Respondent's position that it acted lawfully when it transferred its employee Doyle Pinyan from the day shift to the night shift in September 1979. Specifically, Respondent maintains that it was error for the Administrative Law Judge to rule irrelevant the proof that Respondent, prior to September 1979, but after Pinyan made known his prounion sentiments, had sufficient grounds under existing company policy to discharge Pinyan on two occasions but did not do so. While the evidence offered may be relevant, we do not think its exclusion prejudiced Respondent's defense as Respondent contends. Even considering the excluded evidence as part of the record, we see no reason to reject the Administrative Law Judge's finding that Respondent violated Sec. 8(a)(3) by withholding a 15-cent-per-hour wage increase from Pinyan and by subsequently discharging and refusing to reinstate Pinyan due to his protected union activities.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In light of our decision with respect to the 8(a)(3) violations we find it unnecessary to pass on the other contentions raised by Respondent in its exceptions concerning the Administrative Law Judge's additional conclusions that Respondent violated Sec. 8(a)(4) by withholding the wage increase from, and by discharging and refusing to reinstate, employee Pinyan.

Respondent has also excepted to the Administrative Law Judge's finding that it violated Sec. 8(a)(1) by interrogating and threatening its employees William Bledsoe and Doyle Pinyan with discharge during an August 1978 interview. Respondent asserts, *inter alia*, that it was a denial of due process of law for the Administrative Law Judge to deny the General Counsel's post-trial motion to amend the complaint to allege certain conduct to be a violation of the Act, and to find subsequently that the conduct constitutes a violation of Sec. 8(a)(1). Upon a careful review of the record it is clear that the operative facts forming the basis for the Administrative Law Judge's finding are well established. Employees Bledsoe and Pinyan credibly testified that during the August 1978 interview Manager Handschumaker threatened to discharge the person who was "responsible" for the strike notices. In light of this credited testimony, and since the issue was fully litigated and is clearly related to the subject matter of the complaint, we hereby affirm the Administrative Law Judge's additional finding of unlawful conduct even though it was not alleged to be an unfair labor practice in the complaint. See, generally, *Crown Zellerbach Corporation*, 225 NLRB 911 (1976).

WE WILL NOT promise our employees additional benefits if they refrain from joining or engaging in activities on behalf of the Union.

WE WILL NOT threaten our employees that we will close our plant if they join or engage in activities on behalf of the Union.

WE WILL NOT threaten our employees that it would be futile for them to join or participate in activities on behalf of the Union.

WE WILL NOT threaten our employees that we will withhold wage increases or that wage increases have been withheld because they join or engage in activities on behalf of the Union.

WE WILL NOT threaten our employees who engage in activities on behalf of the Union by accusing them of causing damage to our property.

WE WILL NOT threaten to shoot our employees if they engage in activities on behalf of the Union.

WE WILL NOT promise our employees a pay increase if they vote not to strike.

WE WILL NOT threaten our employees with discharge if they engage in activities on behalf of the Union.

WE WILL NOT withhold wage increases from our employees because they engaged in activities on behalf of the Union.

WE WILL NOT discharge or otherwise discriminate against our employees with regard to hire or tenure of employment or any term or condition of employment for engaging in activities on behalf of the Union.

WE WILL NOT refuse to recognize and bargain collectively in good faith with Aluminum Workers International Union, AFL-CIO, as the exclusive representative of our employees in the following bargaining unit:

> All production and maintenance employees employed by Respondent at its Decatur, Alabama, facility including leadmen, but excluding all office clerical employees, technical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL offer Doyle E. Pinyan reinstatement to his former or to a substantially equivalent position of employment without prejudice to his seniority or any other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of wages or other benefits suffered as a result of our discrimination against him, with interest.

WE WILL recognize and, upon request, bargain in good faith with Aluminum Workers International Union, AFL-CIO, as the exclusive representative of all employees in the aforesaid unit.

JAX MOLD & MACHINE, INC.

## DECISION

### STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge: This matter was heard at Decatur, Alabama, on June 24 and 25, 1980. The charges were filed by Aluminum Workers International Union, AFL-CIO, hereinafter called the Union or the Charging Party, in Case 10-CA-13946, on August 30, 1978 (amended October 2, 1978); in Cases 10-CA-14956-1 and 10-CA-14956-2 on August 28, 1979 (Case 10-CA-14956-1 was amended on October 19, 1979). The complaint in Case 10-CA-13946 issued on October 29, 1979, and order consolidating cases, complaint, and notice of hearing issued on the subsequently filed charges on November 9, 1979. The consolidated complaints alleged that Jax Mold & Machine, Inc., herein after called Respondent or Employer, violated Section 8(a)(1) of the National Labor Relations Act, hereinafter called the Act, through various and numerous acts of interference, restraint, and coercion of its employees by its supervisors and agents, and further violated Section 8(a)(4), (3), and (1) of the Act by withholding a wage increase from and causing the discharge of its employee Doyle E. Pinyan because he gave testimony to the National Labor Relations Board, hereinafter called the Board, and because of his union activities, and further violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from and refusing to bargain with the Union as the exclusive representative of an appropriate unit of its employees.

Upon the entire record,[1] including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following:

### FINDINGS OF FACT

#### I. JURISDICTION

Respondent is a corporation licensed to do business in the State of Alabama with an office, plant, and place of business located in Decatur, Alabama, where it is engaged in the manufacture and repair of tire molds. During the 12-month period preceding issuance of the original complaint, Respondent sold and shipped finished

[1] Certain errors in the transcript have been noted and are hereby corrected.

products valued in excess of $50,000 directly to customers located outside the State of Alabama. The complaints allege, Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. LABOR ORGANIZATION

The complaints allege, Respondent admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### A. *Background*

On February 23, 1978, a majority of Respondent's production and maintenance employees[2] designated and selected the Union as their bargaining representative in a secret-ballot election conducted by Region 10 of the Board. On March 3, 1978, the Union was certified by the Board as the exclusive bargaining representative of the employees in an appropriate bargaining unit. A series of bargaining sessions were conducted between the parties from March through September 1978. From September 25 until December 19, 1978, the employees of Respondent engaged in a strike. There is no contention that the strike was other than an economic strike. The striking employees were recalled to work at various times on and after January 1979. The parties met in January 1979 and following that meeting there were no further requests from the Union to meet and bargain until a written request to bargain was made to Respondent by the Union in a letter dated July 27, 1979. During the time period between January and the end of May 1979, the Union contended unsuccessfully before the General Counsel of the Board that it had an agreed-upon contract with Respondent which agreement it contended Respondent would not execute. As a result of the July 27, 1979, written request to meet, the parties agreed on an August 30, 1979, meeting date. On August 9, 1979, Respondent notified the Union in writing that it was withdrawing recognition of the Union and cancelling the August 30, 1979, meeting. Respondent based its withdrawal of recognition on a claim the Union no longer represented a majority of its employees in the certified unit as evidenced by two petitions signed by 35 of those unit employees.

Because the allegations of the 8(a)(1) violations are numerous, intertwined, and attributed to a number of different supervisors of Respondent, chronological treatment of the allegations would be unwieldy. Accordingly, treatment of the allegations will be set forth below substantially in the order the allegations appeared in the original complaint.

### B. *The Alleged 8(a)(1) Violations*

The General Counsel's complaints allege that Respondent violated Section 8(a)(1) of the Act in numerous respects during the period extending from on or about June 12, 1978, to on or about August 20, 1979. Unlawful conduct is attributed to: Work Manager William Handschumaker, Night Superintendent Tommy Hammond, Quality Control Supervisor Frank Archer, and Finishing Line Foreman Joel Turner. Respondent moved at the hearing to amend its answers to admit the supervisory status of each of these individuals and, accordingly, I find that each of the named individuals was an agent of Respondent and was a supervisor within the meaning of the Act when they were alleged to have engaged in the conduct described in the complaint. The specific complaint allegations are summarized and discussed below.

#### 1. Alleged interrogation

Paragraph 7 of the complaint in Case 10-CA-13946 alleges that on or about August 25, 1978, Respondent through Handschumaker, work manager, interrogated its employees concerning their union membership, activities, and desires; and paragraph 7 of the complaint in Cases 10-CA-14956-1, -2 alleges that on or about July 10, 1979, and August 6, 1979, Quality Control Supervisor Archer, and Finishing Line Foreman Turner respectively interrogated employees concerning their union membership, activities, and desires.

The General Counsel's specific contentions and the record evidence revealing the pertinent acts and conduct of the named Respondent officials are set forth below:

##### a. *Work Manager Handschumaker*

The General Counsel contends that Handschumaker interrogated Respondent's employees concerning their union membership, activities, and desires on or about August 25, 1978.

Counsel for the General Counsel relies upon the testimony of employee Doyle E. Pinyan to establish the violation.

Pinyan testified to various conversations between himself and Handschumaker as having taken place the week of, but prior to, the employees voting on whether to engage in a strike against Respondent. According to Pinyan, the first strike vote at Respondent was taken the last week of August 1978. The gist of these conversations between Handschumaker and Pinyan are covered *infra*. Pinyan testified he was asked by Handschumaker during the week in question if he wanted to bring his gun to work and he and Handschumaker protect the people who wanted to cross the picket line, or if he and Handschumaker just wanted to go out there and whip the union people. Pinyan made no response to Handschumaker's comment. Handschumaker denied statements attributed to him by Pinyan that were alleged to have taken place in the general time frame of this allegation; however, Handschumaker was not specifically questioned regarding the particular allegations set forth above.

Respondent urges in brief that Pinyan be discredited in that he was a clearly composed and extremely well prepared witness but his testimony was given "machine gun" manner, through in the rapid recitation of the alleged unlawful statements he claims to have heard. Re-

[2] A full description of the bargaining unit is:

All production and maintenance employees employed by Respondent at its Decatur, Alabama, facility including leadmen, but excluding all office clerical employees, professional employees, technical employees, guards and supervisors as defined in the Act.

spondent also urges that Pinyan has a financial incentive for lying in that if a violation is found Pinyan would be entitled to a make-whole remedy. Respondent further contends crediting Pinyan would necessitate partially discrediting five disinterested witnesses. Respondent also contends Pinyan clearly should be discredited with regard to his testimony in reference to his termination notice.

Pinyan's testimony impressed me as being truthful. Additionally, his testimony was consistent with other admitted allegations attributed to Handschumaker. For example, as will be discussed hereinafter, Handschumaker admitted that in anger he threatened to shoot employees regarding a restroom problem. Employee William Bledsoe testified, on cross-examination by Respondent, that Handschumaker told him if the Union were voted in he would bring his shotgun to work and let people cross the picket line. I find in observing Pinyan's testimony that his clear quick responses to questions purported to him, enhanced, not detracted from, his credibility. I conclude that Work Manager Handschumaker, Leadman Parviz Amiri, former Finishing Line Foreman Joel Turner, and former Quality Control Supervisor Frank Archer are not the truly disinterested witnesses Respondent would contend they are. Finally, it appears Pinyan's recollections with respect to his termination notice are less than accurate; however, I conclude it was attributable to confusion on Pinyan's part rather than an attempt to fabricate testimony. All factors considered and having had the opportunity to observe Pinyan's testimony, I credit his version of the facts of the week of August 26, 1978, as well as his testimony regarding facts set forth hereinafter.

I find, as alleged, that Respondent, through its agent and supervisor, Handschumaker, engaged in interrogation as outlined above when it placed its employee in a position of having to disclose his union sympathies. Such conduct violates Section 8(a)(1) of the Act. Cf. *Idaho Pacific Steel Warehouse Co., Inc.*, 227 NLRB 326, 331 (1976).

b. *Quality Control Supervisor Archer*

The General Counsel contends Respondent through Archer interrogated its employees concerning their union membership, activities, and desires on or about July 10, 1979.

Counsel for the General Counsel relies upon the testimony of employee Pinyan to establish the violation.

Archer denied having any such conversation as attributed to him by Pinyan. Archer in his direct testimony also denied knowing as late as August 1979 that a petition was being circulated to withdraw support from the Union, notwithstanding the fact that other of Respondent's management witnesses acknowledged it was common knowledge in the plant during this time frame that a petition was being circulated. I find Archer's testimony that he did not even know a petition was being circulated to be unbelievable. I discredit Archer's denial of the conversation attributed to him by Pinyan.

I therefore conclude that Respondent, through its agent and supervisor Archer, engaged in unlawful interrogation in violation of Section 8(a)(1) of the Act as outlined above. I also find, as alleged in complaint paragraph 8 and 10 of Cases 10-CA-14956-1, -2, that the conversation of Archer as set forth above contained unlawful threats of reprisal if employees joined or engaged in activities on behalf of the Union, and promises of additional benefits to employees if they refrained from joining or engaging in activities on behalf of the Union, all in violation of Section 8(a)(1) of the Act.

c. *Finishing Line Foreman Turner*

The General Counsel contends Respondent through Turner interrogated its employees concerning their union membership, activities, and desires on or about August 6, 1979.

Counsel for the General Counsel relies upon the testimony of employee Standley Letson to establish the violation.

Letson testified he was one of the employees who participated in the circulation of a petition for the purpose of obtaining the signatures of employees who wished to withdraw their support from the Union. After obtaining these signatures, Letson gave the completed petition to Work Manager Handschumaker around the first week in August 1979. Letson testified that on the day before he turned the petition in to Handschumaker he had a conversation with Turner regarding the petition. According to Letson, he and Turner lived near each other, were friends, and played baseball together. On the day before Letson turned in the petition he was riding home from work with Turner when Turner inquired of him how things were going in the shop and asked, "Do you reckon we could have a chance to get rid of the Union." Letson responded to Turner by telling Turner they had a majority of 20 employees on the day shift and 13 to 14 on the night shift who wanted to withdraw support from the Union. According to Letson, Turner responded, "well, maybe . . . he believed that would be the best thing that ever happened."

Turner testified he was no longer employed by Respondent due to a supervisory layoff in November 1979. Turner acknowledged that in early August 1979, it was common knowledge at the plant that a petition was being circulated by employees in an attempt to get rid of the Union. Turner also acknowledged that the conversation regarding the petition had taken place between he and Letson while enroute home one afternoon in August 1979. Turner claims Letson rather than he first raised the subject of the petition. Although I credit Letson's version as the more accurate of the two, my findings would be the same for either version.

Respondent, in its brief, acknowledges the evidence is largely undisputed concerning this allegation but contends that it was nothing more than a casual conversation between two friends, albeit one a supervisor, away from the work place while driving home together. Respondent urges that Turner's brief conversation with Letson was manifestly noncoercive and innocuous. In support of its contentions in this respect, Respondent cites *Audiovox West Corporation*, 234 NLRB 428 (1978), and *Baker Brush Co., Inc.*, 233 NLRB 561 (1977). In *Audiovox*, the credited friendly interrogation was by a supervisor who was related to the interrogated employees

either as brother-in-law or first cousin, and in *Baker* the inquiry by a supervisor to an employee/friend was whether the known union adherent would serve as an observer at a Board-conducted election. Considering the surrounding circumstances of the case before me, I conclude the interrogation was coercive interference and as such violated Section 8(a)(1) of the Act, notwithstanding the fact the participants may have been friends. See: *Coca-Cola Bottling Company of Bloomington, Indiana, Inc.*, 250 NLRB 1341, 1348 (1980), and *Mayfield's Dairy Farms, Inc.*, 225 NLRB 1017, 1019 (1976).

2. Alleged threats of plant closure and intertwined allegations

Paragraph 8 of the complaint in Case 10-CA-13946 and paragraph 11 of the complaint in Case 10-CA-14956-1, -2 allege that on or about August 28, September 11, and September 25, 1978, and June 8 and 11, 1979, Respondent through Handschumaker threatened its employees that it would close the plant if its employees engaged in activities on behalf of the Union.

Counsel for the General Counsel relies upon the testimony of employee Pinyan to establish the various violations.

Pinyan testified he received a registered letter from Respondent offering him the opportunity to return to work the first week in June 1979. Pinyan had participated in the 1978 strike referred to earlier herein and had not been afforded an opportunity to return to work prior to June 1979. On his first day back at the plant, Pinyan met with Handschumaker and was told by him that he (Pinyan) would be returned to a job assignment on the finish line. Pinyan inquired about his former job and was told by Handschumaker that the finish line position was the only thing he had to offer, that the strike did not help anyone. Handschumaker stated to Pinyan that he would not go through another strike nor negotiate another contract. Handschumaker, according to Pinyan, also stated he would shut the plant down before he would go through another strike. Pinyan testified that during the same week in June 1979 (but on a separate occasion from the one just described above) he asked Handschumaker about a raise Pinyan contended was due him. Handschumaker told Pinyan he did not intend to give him the raise and he (Handschumaker) was not afraid of the National Labor Relations Board, the Union, or the union members. Handschumaker continued according to Pinyan to state that he would not negotiate with the Union and he would shut the plant down.

Pinyan stated Handschumaker spoke with him on an every-other-week basis during contract negotiations in 1978. Handschumaker told Pinyan in these conversations he would not negotiate a contract; rather, he would drag out the negotiations as long as he could. In addition, Pinyan testified Handschumaker stated he would not negotiate with the Union but would instead shut the plant down.

Handschumaker denied ever discussing the status of negotiations with Pinyan. Handschumaker also testified he never indicated to Pinyan he would close the plant rather than go into collective bargaining; that in fact he did not even have the authority to close the plant. Handschumaker denied ever saying he would not sit down and negotiate with the Union. Handschumaker testified he did tell employees at any meetings he had with them the only thing he had to do in negotiations was to sit down with the other side, that he did not have to agree to anything.

As discussed elsewhere in this Decision, I credit the testimony of Pinyan. I find, as alleged, that Respondent, through Handschumaker, made the threats to close the plant that were attributed to him in paragraphs 8 and 11 of the respective complaints. I also find, based on the same evidence, that Respondent, through Handschumaker threatened its employees it would be futile to engage in activities on behalf of the Union by stating it would refuse to bargain with the Union and that it would withhold wage increases from its employees if they joined or engaged in activities on behalf of the Union, as alleged in paragraph 9 of the complaint in Case 10-CA-13946 and paragraphs 9 and 13 of the complaint in Case 10-CA-14956-1, -2.

3. Alleged threats to shoot and related allegations

Paragraphs 10 and 12 of the complaint in Case 10-CA-13946 allege that on or about August 22, 1978, Respondent through Handschumaker threatened to shoot its employees and accused its employees of property destruction because the employees engaged in activities on behalf of the Union.

Counsel for the General Counsel relies upon the testimony of employees Pinyan and William Bledsoe to establish these violations.

Bledsoe, a 6-year employee of Respondent, testified that approximately 1 month before the September 1978 strike Handschumaker spoke to him in the work area at the plant in the presence of fellow employees Edward McNutt and Greg Swan and asked Bledsoe if he knew anything about the bathroom having paper in it. Bledsoe indicated to Handschumaker that he did not know anything about the bathroom situation. Handschumaker then stated to Bledsoe in the presence of the others, "Well, it looks like I'm going to have to shoot some of these union instigators before Friday." Bledsoe testified a strike vote was scheduled to be taken later on Friday of that same week. I credit Bledsoe's testimony.

Employee Pinyan testified Handschumaker approached him at his work station during the week of August 26, 1978, and stated, "Those God damn union son of a bitches stopped up my commode. It looks like I'm going to have to shoot them before Friday." According to Pinyan, following this comment Handschumaker walked away.

Respondent in its brief acknowledges the factual evidence in question is undisputed leaving only a determination to be made as to the legal significance of Handschumaker's remark. Respondent contends Handschumaker made the comments in an angry reaction to what he believed to be deliberate acts of harassment during the time immediately preceding the union strike vote meeting. Respondent further contends that the threat to "shoot" the union instigators responsible for stopping up the commodes should not be taken seriously and cites *F. Strauss*

*& Son, Inc.*, 200 NLRB 812, 822 (1972); *American Care Centers, Inc., d/b/a Gold Leaf Convalescent Home*, 220 NLRB 421, 428 (1975); and *Mississippi Extended Care Center, Inc., d/b/a Care Inn, Collierville*, 202 NLRB 1065, 1075 (1973), in support of its contentions. In *F. Strauss & Son*, a supervisor, after getting "wrong" responses to several questions about an employee's union sentiment, stated to the employee that he wished he could get the employee along with certain other named employees into a truck, put some dynamite into it, and blow them all up. The Board adopted the Administrative Law Judge's conclusion that employees would not believe the comment and as such there was a failure to establish a violation. In *Gold Leaf, supra*, the Board adopted an Administrative Law Judge's finding of no violation where a supervisor, who regularly kidded and joked with his employees, told a known union adherent via telephone while pretending to be a union representative that the nursing home in that case was going to be blown up by the union and that they wanted to put dynamite into the employee's nose and ears, light her up, and use her as a bomb; the supervisor then laughed and told the employee what time to report to work the following day. In *Care Inn, supra*, the credited testimony established that at the time a supervisor stated she was glad to hear a named employee was not for the union laughingly stated, "I'm glad to hear that, Dowdy, that anybody that would want a union in a place like this deserved to have their rear kicked."

I find in the case before me Handschumaker's comments were made in anger rather than in a joking manner. I also conclude, after considering all the record facts, Handschumaker's comments were believable by the employees and were taken seriously by them. I find the threats and accusations by Handschumaker, as alleged, were coercive and in violation of Section 8(a)(1) of the Act.

### 4. Alleged threats to withhold and promises of wage increases

Paragraphs 11 and 12 of the complaint in Case 10-CA-13946 allege that on August 18, 1978, Respondent through Handschumaker promised its employees a pay raise if they would vote not to strike, and on June 12, 1978, threatened its employees that wage increases had been withheld because its employees engaged in activities on behalf of the Union.

Counsel for the General Counsel relies upon the testimony of employee Pinyan to establish these violations.

Pinyan testified that during the week of August 26, 1978, but prior to the strike vote of that week, he asked Handschumaker about a pay raise and Handschumaker responded that Pinyan's money would come up considerably if he would vote "no" on the strike and help to destroy the Union. Pinyan indicates he made no response to the comment of Handschumaker. Handschumaker denied any such conversation. Handschumaker did however acknowledge he was aware of the fact, and stated it was common knowledge the employees were going to take a strike vote the week of August 26, 1978.

Pinyan testified that in June 1978 Handschumaker walked up to him while he was alone at his duty station and told him he had gotten him a 10-cent raise. Pinyan testified he responded to Handschumaker by telling him he had earlier promised him a 25-cent raise instead of 10 cents. Handschumaker told Pinyan he had had to fight like hell with the Union to get Pinyan the 10-cent raise. According to Pinyan, Handschumaker had promised him when he was hired a 25-cent pay increase every 90 days until he reached the top of the pay scale.

Handschumaker testified he never promised Pinyan regular 90-day, 25-cent wage increases as claimed by Pinyan. Handschumaker stated Pinyan was told wage increases after the first one were based on merit and experience. Handschumaker also testified he followed the normal practice of routinely discussing the matter of the pay increase with the Union and that Pinyan never complained about the missing 15-cent wage increase.

I find that Handschumaker's promise of a wage increase to vote against a strike by the Union constituted interference, restraint, and coercion clearly in violation of Section 8(a)(1) of the Act. I further find Respondent's comments regarding having to fight the Union to get Pinyan a 10-cent-per-hour pay increase had the clear effect of discouraging support for the Union and was intended to influence employees against the Union and discourage membership therein. See *World Wide Press, Inc.*, 242 NLRB 346, 361 (1979), and *Marine World USA*, 236 NLRB 89 (1978).

### 5. Alleged threats of reprisals and of futility

Paragraphs 8 and 9 of the complaint in Cases 10-CA-14956-1, -2 allege that on April 30 and August 20, 1979, Respondent through Hammond threatened its employees with reprisals if its employees joined or engaged in activities on behalf of the Union and on April 30, May 3, and June 12, 1979, threatened its employees that it would be futile for them to join or participate in activities on behalf of the Union.

Counsel for the General Counsel relies upon the testimony of employees Donald Cooper, Ronald A. Weems, Steven Wiley, and Daniel McCutcheon to establish these violations.

Employee Cooper commenced work at Respondent in 1974. Cooper testified his position with Respondent was that of a janitor on the night shift and his supervisor was a fellow named "Tommy." Cooper testified he participated in the strike at Respondent's plant. Upon return to work after the strike, Cooper attended a meeting called by Hammond on April 30, 1979. Present at the meeting other than Cooper and Hammond were leadmen Parving Amiri and Jimmy Norton. According to Cooper, Hammond told him he was being recalled to do "stuff" that nobody else would do. Hammond also told Cooper that as far as he (Hammond) was concerned the Union did not exist. Respondent stipulated it had a night supervisor, Tommy Hammond, but could not stipulate that Cooper was referring to Hammond. I find based on the comments attributed to supervisor "Tommy" by Cooper and by Hammond's own admissions Cooper was referring to Hammond.

Employee Wiley testified regarding his return to work on May 3, 1979, after the strike, that Hammond had a

return interview with him along with nightshift leadmen Parving, Norton, and Bill Bowen. Nightshift janitor Cooper was also present. According to Wiley, Hammond told the employees that if they had any questions about the Union not to mention them to him because as far as he (Hammond) was concerned the Union no longer existed in the plant. Employee McCutcheon testified to essentially the same comments by Hammond upon McCutcheon's return to work on June 12, 1979.

Hammond admitted telling the various groups of returning strikers that as far as he was concerned the Union no longer existed. Respondent acknowledges in its brief there is no factual dispute regarding these incidents. Hammond, during his testimony, explained his comments by stating he did not want to have to answer questions regarding the status of negotiations and that he wanted to remove himself from any problems the employees were having in this respect.

I conclude such conduct by Hammond tended to interfere with, restrain, and coerce employees in violation of Section 8(a)(1) of the Act.

Counsel for the General Counsel urges that the comment to Cooper by Hammond that he had been returned to work to perform "stuff" nobody else would do had the effect of constituting a threat of reprisal against Cooper. The General Counsel cites *Laredo Coca-Cola Bottling Company*, 241 NLRB 167, 173 (1979), enfd. 613 F.2d 1338 (5th Cir. 1980), in support of such a finding. In the *Laredo* case the Administrative Law Judge found a threat of futility to employees in supporting the Union and a threat to job security of employees where a supervisor told an employee that he would not sign a contract with the Union and would prefer to sell the company before signing a contract. In the case before me there is no evidence in the record of what, if any, skills are required to perform a janitor's position at Respondent's plant nor is there evidence of what type assignments janitors had performed before the strike. It may have been that janitors of Respondent performed the most basic type of assignments. Based on the status of the record, I do not view the comment as constituting a threat as alleged in paragraph 8 of the complaint in Cases 10-CA-14956-1, -2. Accordingly, I recommend that portion of complaint paragraph 8 attributed to Hammond as having allegedly occurred on April 30, 1979, be dismissed.

Employee Weems testified to a conversation between himself and Hammond as having taken place on August 20, 1979. According to Weems' testimony, Hammond called him into his office and after leadman Bill Bowen left the room asked Weems if he would like to sign a petition to decertify the Union. According to Weems, he told Hammond he was a member of the Union and would like to keep it that way. Weems testified Hammond then told him that he knew Weems would get into trouble when he started fooling around with the Union. According to the testimony of Weems, it was at this point that leadman Bowen returned to the room. Hammond then told Weems his work was not up to par.

After observation of and full consideration given to Weems' testimony, I have concluded that he did not tell the truth. I conclude Weems was a disgruntled employee who had been discharged by the man he was testifying against. I find that Hammond did not ask Weems to sign a petition to decertify the Union nor did he tell Weems he would get in trouble for fooling around with the Union. The alleged solicitation to sign the petition occurred at a time after the petitions had already been turned over to Respondent. Respondent had already refused to bargain with the Union based on the petitions as of the time of the alleged conversation. I, therefore, recommend that those portions of paragraph 8 alleged to have taken place on or about August 20, 1979, and all of paragraph 12 of the complaint in Cases 10-CA-14965-1, -2 be dismissed.

### C. *The Alleged 8(a)(3) and (4) Violations*

Paragraphs 14, 15, and 16 of the complaint in Case 10-CA-13946 allege that on or about June 12, 1978, Respondent unlawfully withheld a scheduled wage increase from its employee Pinyan in violation of Section 8(a)(3) and (1) of the Act. Further, paragraphs 14, 15, 16, and 17 of the complaint in Cases 10-CA-14956-1, -2 allege that on or about June 8, 1978, Respondent withheld a 15-cent-per-hour wage increase from its employee Pinyan, and on or about August 15, 1979, discharged and thereafter refused to reinstate its employee Pinyan because of his membership in and activities on behalf of the Union and because he gave testimony under the Act in Case 10-CA-13946.

Pinyan began work for Respondent in January 1978. He worked as an inspector prior to the 1978 strike and he worked on the finishing line after his return to work following the strike. Pinyan testified about his initial interview for hire which he stated was conducted by Handschumaker. Pinyan testified that in his interview for employment by Handschumaker he was told he would receive a 25-cent wage increase after 90 days and a 25-cent raise every 90 days thereafter until he reached the top of the pay scale. Pinyan received his first 25-cent raise after completing 90 days' employment. At the time when Pinyan would have been due for a second 90-day raise, Handschumaker spoke with him. Pinyan testified Handschumaker told him that he had gotten him a 10-cent raise. Pinyan then inquired of Handschumaker where his 25-cent raise was that he had been promised. According to Pinyan, as set forth elsewhere in this Decision, Handschumaker stated, "Well, I had to fight like hell—fight the Union to get you this raise. Pinyan received only a 10-cent raise at the time and as a result he complained to both the Union and Respondent. Charges were then filed by the Union with the Board on Pinyan's behalf.

Prior to the Board-conducted election, Pinyan had been against the Union and had made his views in that respect known. However, shortly after the election, Pinyan changed his position and became a supporter of the Union. By mid-August 1978, Respondent knew of Pinyan's prounion position. The last week in August 1978 Pinyan was called into Handschumaker's office along with fellow employee Bledsoe where Handschumaker, General Superintendent Bob Vinson, and Foreman Jerry Steward were present. According to the testi-

mony of Pinyan, Handschumaker asked employees Pinyan and Bledsoe about a telegram he had received that date from the Union (G.C. Exh. 3). The telegram identified the two employees as supporters of the Union. Handschumaker also asked the employees about a strike notice handbill that he had a copy of. Pinyan testified Handschumaker wanted to know where the notice came from, what it was about, and he would fire whoever was responsible for the handbill.[3] Respondent was also aware of Pinyan's union sympathies as he remained on strike for the full period of the strike. Pinyan was not recalled to work until June 1979.

Pinyan received a letter the first week in June 1979 from Respondent asking him to arrange an appointment with Respondent if he wished to return to work. Pinyan met with Handschumaker the first week in June 1979 and was told by Handschumaker that he had a job on the finish line. Pinyan then inquired of his former job and was told by Handschumaker that the strike did not help him or the others, and Handschumaker then made the threats not to negotiate and to close the plant attributed to him as set forth elsewhere in this Decision.

Pinyan testified his wage upon his return to work following the strike did not include the 15 cents he testified he had been promised. It did, however, include a raise that all employees had received upon their return to work from the strike. Pinyan asked Handschumaker during the first week in June 1979 about the missing 15 cents from his pay raise and was told by Handschumaker that he did not intend to give Pinyan the raise and: "he was not afraid of the National Labor Relations Board, the Union, nor the union members. He was tired of dealing with them. I was not going to get the raise." Handschumaker, according to Pinyan, concluded the conversation by stating that he would not negotiate and would shut the plant down. As indicated elsewhere in this Decision, I credit Pinyan's testimony.

Counsel for the General Counsel urges there can be no question as to Handschumaker's sustained union animus, and counsel for the General Counsel contends Handschumaker's blaming the Union for Pinyan's not receiving the full 25-cent raise after the second 90 days was in retaliation for Pinyan's and other employees' support of the Union and protected concerted activities.

Handschumaker testifying for Respondent denied ever promising Pinyan or any other employee that he would get regular 90-day, 25-cent wage increases. Handschumaker testified it was Respondent's policy to pay 25-cent wage increases after the first 90 days but thereafter to pay 10-cent merit increases assuming normal employee progress. Respondent's Exhibit 9 sets forth 25-cent, 90-day wage increases and 10-cent merit increases for employees of Respondent for the period June and July 1978. Also, Respondent contends it discussed the wage increase of 10 cents for Pinyan with the Union prior to giving it to him.

I find the motivation for the denial of Pinyan's increase and the withholding of it thereafter was because of his union activities and as such violated Section 8(a)(3) and (1) of the Act, as alleged. Pinyan was told when he was hired that he would receive 25 cents every 90 days by Handschumaker. Handschumaker, in June 1978, unlawfully blamed the Union for Pinyan's failure to receive the full 25-cent wage increase. Handschumaker, in the midst of making various serious unlawful threats, including the threat of plant closure, stated his firm intention not to pay Pinyan his wage increase and at the same time expressed his lack of concern or fear of the National Labor Relations Board, the Union, or union members stating he was tired of dealing with them. I further find Handschumaker's comment regarding the Board was retaliation for Pinyan's involvement in Case 10-CA-13946 and as such the withholding of the wage increase constitutes a violation of Section 8(a)(4) of the Act.

Pinyan worked from his recall in June 1979 until August 16, 1979, at which time he quit his employment rather than be involuntarily transferred to the night shift. Pinyan testified he was approached by his immediate supervisor, Turner, in mid-August 1979 and told by Turner that he was being transferred from the day to the night shift effective the following Monday. Pinyan told Turner he was attemtping to go to school nights, he had a second job at night, and his wife's job would conflict with this change and as a result it would ruin everything he had going. According to Pinyan, Turner told him he was "rolling" an employee, Milton Jones, from the night shift to day and that he needed someone with Pinyan's experience on the night shift. Pinyan then inquired of Turner as to why it had to be him as there were other persons on the day shift with less seniority but more experience. According to Pinyan, Turner replied, "That's the way it had to be."

A short time later that same day, Pinyan inquired of Superintendent Vinson if he had to be transferred and was told yes. When Pinyan asked why, Vinson stated that "seniority ruled." Pinyan explained to Vinson about his plans to attend night school, his second job, and his wife's conflicting job. Pinyan stated Vinson ended the conversation by stating that's the way it would have to be.

The following day Pinyan again inquired of Vinson why he had to be transferred since there were other employees with less seniority and more experience on the day shift that could be transferred rather than himself. Vinson again told Pinyan this was the way it had to be. Additionally, Vinson told Pinyan he would talk to Turner about the transfer. Pinyan stated to Vinson if that was the way it had to be, he would have to quit.

Immediately following the conversation with Vinson, Pinyan again spoke with Turner regarding the transfer. Pinyan again explained his problems with school, his second job, and his wife's job and asked Turner if he was

[3] Counsel for the General Counsel moved at the completion of the hearing to amend the complaint in Cases 10-CA-14956-1, -2 to allege the comment of Handschumaker as a threat of discharge. I denied the motion on the belief that fundamental fairness and due process requires that a Respondent be informed of what it is charged with before a hearing, not at the completion thereof. Counsel for the General Counsel in brief urges that the matter was fully litigated and that an 8(a)(1) finding of interrogation and threat of discharge is warranted. I conclude the matter was fully litigated and as such I find Respondent through Handschumaker interrogated and threatened its employees with discharge in the August 1978 interview in violation of Sec. 8(a)(1) of the Act.

certain it had to be that way. Turner responded that Pinyan's situation was life. Pinyan then asked for his check and told Turner he was quitting because he felt he was being discriminated against because of his union activities.

Pinyan testified he intended to enroll at night in a local machinist school and had written for the letters of application from the school. Pinyan stated he had told both Vinson and Turner about his school plans about 3 days earlier in the same week of his transfer from day to night shift. Pinyan told Vinson and Turner of his school plans while both were together at the plant. Vinson responded to the school plans of Pinyan by stating that he did not blame an individual for attempting to better himself.

Pinyan further testified he judged horse shows and worked rodeos at night and on weekends. Pinyan and Turner were both members in the Junior Chamber of Commerce and it was the Chamber that sponsored the horse shows and rodeos. Pinyan testified that Turner had seen him judge horse shows and he and Turner had discussed it numerous times. Pinyan stated that prior to the actual time of a horse show or rodeo, preparation was needed to be done which was part of his job and as a result he considered it to be a full-time second job.

Pinyan identified fellow employees Ricky Morgan and Anthony Vinson as having less seniority than he on the day shift at the time of his transfer.

Turner testified regarding Respondent's transfer of Pinyan stating that about 1 or 2 months prior to the transfer he spoke with Handschumaker about the need to transfer employee Milton Jones from night to day shift. Turner indicated he thought broaching would go smoother on the day shift if he could transfer Jones, who was a broacher, to days to help train the employee on the day shift that was performing broaching. According to Turner, he and Handschumaker agreed at that time that they had no one qualified to transfer to nights and as a result no transfer was made. Turner testified that no specific names were discussed as to who might be transferred from days to nights. Turner further testified he did not mention Pinyan by name as the one to be transferred from day shift to night shift until a couple of days before the August 16, 1979, transfer was announced. Turner approached Handschumaker a couple or so days before the transfer and told Handschumaker he wanted to transfer Jones to the day shift. According to Turner, Handschumaker asked who he would transfer to nights. Turner told Handschumaker he had chosen Pinyan whom he believed could do the job on nights. Handschumaker gave Turner the go ahead for the transfer. Turner stated he was aware of Pinyan's second job of horse show judging and had learned of Pinyan's plans to attend tech school prior to transferring him from day to night shift. Turner denied that Pinyan's second job, school plans, or a charge being filed on his behalf with the National Labor Relations Board entered into his decision to transfer him.

Handschumaker testified that Turner made the decision to transfer Pinyan from day to night shift. Handschumaker testified that about 2 or 3 months prior to the actual transfer, Turner had discussed the need for someone to do grinding on the night shift. According to Handschumaker, he told Turner to hold off for a while and maybe no one would need be transferred to nights. Handschumaker stated Respondent obtained a "bunch" of molds with deep-letter engraving and Pinyan could do that type job assignment. Handschumaker testified Turner again came to him and asked for someone to be transferred to nights to do the grinding on the deep-letter engraving and recommended Pinyan as qualified for the transfer. Handschumaker gave approval for the transfer. Handschumaker testified that something was mentioned about transferring Milton Jones from nights to days to do broaching. Handschumaker testified he always told everyone he hired of the requirements for assignment to night shift work. Handschumaker stated it was not unusual to transfer employees from the day to night shift and vice versa. Respondent's Exhibit 8 which was received in evidence indicates in excess of 100 transfers from day to night shift during the period of 1972 to 1980. Handschumaker testified that Milton Jones was not transferred to days for a couple of weeks after Pinyan quit, but he did not know the reason for the delay. According to Handschumaker, Jones was a less senior employee than Pinyan. Respondent did not call Superintendent Vinson to testify.

It is apparent that various of Respondent's officials advanced different reasons for the transfer of Pinyan. It was unrebutted that Superintendent Vinson informed Pinyan regarding his transfer that seniority ruled. There were at least two employees with less seniority than Pinyan on the day shift who were not selected for the transfer. Turner indicated a different reason for the transfer namely to bring employee Milton Jones to the day shift to improve the quality of broaching on the day shift and that Pinyan's name as a transferee to nights did not come up until 2 or 3 days before the transfer. Handschumaker testified to yet another reason for the transfer stating it was based on a need for a grinder on nights to handle a particular order that had been obtained by Respondent. According to Handschumaker, Pinyan had been performing grinding on days, therefore he was chosen for the transfer.

I view with suspicion the timing of Turner's selection of Pinyan as the one to be transferred from the day to the night shift. Turner decided to select Pinyan approximately a couple of days before the actual transfer. This timing corresponds with the admitted knowledge that Pinyan was attempting to enroll in night school. Respondent had previously been aware of Pinyan's second job. Considering the strong union animus of Respondent, the union animus directed at Pinyan by the individuals involved in the decision to transfer him, the timing of the transfer, and the questionable business justification for the transfer, I find Respondent seized upon the opportunity to transfer Pinyan to a shift assignment they knew to be unacceptable to him, thus bringing about the constructive discharge of Pinyan in violation of Section 8(a)(3) of the Act. I further find Respondent's statement that it was not afraid of the Board taken in the context of this case demonstrates Respondent's continued hostility toward Pinyan because of his involvement in the

charge and complaint in Case 10-CA-13946. I find the transfer of Pinyan by Respondent that caused Pinyan to quit his employment also violates Section 8(a)(4) of the Act.

### D. *The Alleged Refusal To Bargain*

The Union was certified as the exclusive bargaining representative of Respondent's production and maintenance employees on March 3, 1978. Thereafter, the parties conducted approximately eight or nine bargaining sessions. On September 25, 1978, the unit employees of Respondent engaged in a strike which lasted until December 19, 1978. There were 22 striker replacements hired by Respondent during the strike. There is no contention that the strike was other than an economic strike. There were no requests by the Union for bargaining between January and July 1979; however, the Union had charges filed with the Board during that period contending a contract with Respondent had been arrived at. Those charges were ultimately dismissed and following that dismissal of charges, a request to bargain was made by the Union and an agreed-upon date of August 30, 1979, was set for bargaining.

On August 9, 1979, Respondent wrote the Union advising the Union it had been notified in writing by a majority of its employees that they no longer desired to be represented by the Union. Respondent stated in its letter that effective that date, it would no longer recognize the Union as the bargaining agent for Respondent's employees and in view of that determination it was cancelling the bargaining session previously scheduled for August 30, 1979. The letter in question was signed by Handschumaker. There were 65 unit employees on the payroll for the week ending August 12, 1979.

The written notification to which Respondent referred in its letter of August 9, 1979, was two employee petitions. The two petitions were received in evidence as Respondent Exhibits 1 and 3. The two petitions contained a total of 35 unit employee signatures.

Leadman Jimmy Norton testified that during the time period of August 1979 he asked his supervisor, Hammond, how to go about getting the Union voted out. Hammond informed Norton he did not know the procedure but would find out and get back to Norton. According to Norton, about a week later Hammond instructed him how to prepare the petition and Norton wrote it down "word for word." Hammond told Norton he did not want to see the petition. Norton obtained signatures on the petition whenever he could find time including working time. Norton received help in obtaining signatures on the petition from fellow leadman Parviz Amiri.

Employee Standley Letson testified he circulated among the day-shift employees a petition for the employees to sign if they desired to withdraw their support from the Union. Letson obtained the petition he circulated from leadman Amiri. Letson stated that when he completed obtaining signatures on the petition, he gave it to Handschumaker. Letson testified he turned the petition into Handschumaker telling him it was the employees on the day shift that no longer wanted to have dealings with the Union.

Supervisor Turner asked Letson about the petition the day before it was turned into Handschumaker. Turner inquired, as set forth elsewhere in this Decision, if Letson thought they had a chance to get rid of the Union and stated he believed it would be the best thing that ever happened. Letson testified he obtained the language at the top of the petition he circulated from employee Jackie Cockrell. Employee Cockrell corroborated Letson's testimony regarding the preparation of the petition.

It was common knowledge both among management as well as the unit employees that the petitions were being circulated at the time they were. As discussed *supra*, employee Pinyan was asked by Supervisor Archer about the petition and was told by Archer it would be good for those who signed the petition and those who did not would be sorry.

Handschumaker testified that he, on behalf of Respondent, ceased to recognize and ceased continuing to bargain with the Union on August 9, 1979, based on the two employee petitions containing signatures of 35 unit employees. Handschumaker testified he relied additionally on employee turnover and the long strike with new employees. Handschumaker stated he placed a copy of the letter withdrawing recognition from the Union on the plant bulletin board within 2 or 3 days of sending it to the Union.

Respondent's counsel in brief correctly states that the legal principles governing this issue are not disputed and are clearly controlled by the Board's decision in *Celanese Corporation of America*, 95 NLRB 654 (1951). The Board reaffirmed its *Celanese* doctrine in *Computer Sciences Corporation, et al., d/b/a Computer Sciences-Technicolor Associates*, 236 NLRB 266 (1978), where the Board quoted from *Terrell Machine Company*, 173 NLRB 1480-81 (1969), enfd. 427 F.2d 1088 (4th Cir. 1970), as follows:

> It is well settled that a certified union, upon expiration of the first year following its certification, enjoys a rebuttable presumption that its majority representative status continues. This presumption is designed to promote stability in collective-bargaining relationships, without impairing the free choice of employees. Accordingly, once the presumption is shown to be operative, a *prima facie* case is established that an employer is obligated to bargain and that its refusal to do so would be unlawful. The *prima facie* case may be rebutted if the employer affirmatively establishes either (1) that at the time of the refusal the union in fact no longer enjoyed majority representative status; or (2) that the employer's refusal was predicated on a good-faith and reasonably grounded doubt of the union's continued majority status. As to the second of these, i.e., "good faith doubt," two prerequisites for sustaining the defense are that the asserted doubt must be based on objective considerations and it must not have been advanced for the purpose of gaining time in which to undermine the union. [This second point means, in effect, the assertion of doubt must be raised "in a context free of unfair labor practices." See *Nu-Southern Dyeing & Finishing, Inc.*,

*and Henderson Combining Co.*, 179 NLRB 573, fn. 1 (1969), enfd. in part 444 F.2d 11 (4th Cir. 1971).]

When Respondent withdrew recognition from the Union on August 9, 1979, the certified year had expired. However, the presumption of majority status continued. The key issue is whether Respondent has effectively rebutted that presumption. As of August 9, 1979, a majority of the unit employees had signed one or the other of the two petitions indicating they did not want representation by the Union. Therefore, if the two petitions are valid indications of the wishes of the employees, the Union did not have a majority as of the date of Respondent's refusal to continue to recognize and bargain with the Union.

I find the petitions signed by 35 of the 65 unit employees which stated they no longer desired to be represented by the Union were tainted and therefore were not reliable indicators that the Union had in fact lost majority status. Respondent provided, upon request, information to an employee writing one of the petitions how to prepare it word for word. An employee was solicited by Respondent to sign one of the petitions with a promise of benefit if he did sign and a threat of reprisal if he did not sign. Respondent also interrogated its employees concerning the petitions and indicated the petitions' success would be the best thing that could happen for the employees of Respondent. I find Respondent's role regarding the petitions were not that of a disinterested neutral. Accordingly, Respondent may not rely on the tainted petitions as valid consideration to support withdrawal of recognition from the Union. Additionally, Respondent during the time period in question engaged in a course of unlawful coercive conduct aimed at causing and did cause disaffection from the Union. The violations of Respondent as set forth elsewhere in this Decision included: unlawful threats of plant closure, threats not to negotiate, threats to shoot union instigators, comments the Union no longer existed, blaming the Union for failure to grant a pay increase, withholding a pay increase, and constructively discharging a union supporter. Respondent's assertion of its good-faith doubt was not raised in a context free of unfair labor practices.

Respondent at the hearing stated additional reasons which it sought to rely upon in withdrawing recognition from the Union other than the reasons stated in its letter to the Union of August 9, 1979. Respondent appeared to be relying on employee turnover and striker replacements as well as new employees to support its withdrawal of recognition from the Union. I find none of these to constitute valid objective considerations in light of Respondent's unfair labor practices. Even in the absence of unfair labor practices, the Board has adhered to the general rule that new employees, including striker replacements, are presumed to support the union in the same ratio as those whom they have replaced. *Burlington Homes, Inc.*, 246 NLRB 1029, 1033 (1979).

In these circumstances, I find that Respondent unlawfully withdrew recognition from the Union on August 9, 1979, in violation of Section 8(a)(5) and (1) of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(1) of the Act by interrogating its employees concerning their union membership, activities and desires; by threatening its employees with reprisals if they joined or engaged in activities on behalf of the Union; by promising its employees additional benefits if they refrained from joining or engaging in activities on behalf of the Union; by threatening its employees that it would close its plant if the employees joined or engaged in activities on behalf of the Union; by threatening its employees that it would be futile for them to join or participate in activities on behalf of the Union; by threatening its employees that it would withhold wage increases from them if they joined or engaged in activities on behalf of the Union, by threatening employees who engaged in activities on behalf of the Union by accusing those employees of causing damage to Respondent's property; by threatening to shoot employees who engaged in activities on behalf of the Union; by promising its employees a pay raise if they would vote not to strike; by threatening its employees that wage increases had been withheld because they had engaged in activities on behalf of the Union; by threatening its employees that it would be futile for them to join or participate in activities on behalf of the Union; and by threatening its employees with discharge if the employees engaged in activities on behalf of the Union.

4. Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(4), (3), and (1) of the Act by withholding since on or about June 8, 1978, a 15-cent-per-hour wage increase from its employee Doyle E. Pinyan.

5. Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(4), (3), and (1) of the Act by discharging on or about August 15, 1979, and thereafter failing and refusing to reinstate its employee Doyle E. Pinyan.

6. All production and maintenance employees employed by Respondent at its Decatur, Alabama, facility including leadmen, but excluding all office clerical employees, professional employees, technical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

7. Since its certification on March 3, 1978, the Union has been the exclusive collective-bargaining representa-

tive of the employees in the unit set forth in Conclusions of Law 6, above.

8. Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union and by refusing to bargain with the Union since August 9, 1979.

9. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

10. The General Counsel has not established by preponderance of evidence that Respondent has violated the Act as alleged in the complaint except to the extent found above.

## THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act to include the usual posting of appropriate notices to employees. I shall recommend that Respondent offer reinstatement to Doyle E. Pinyan to his former day-shift job or, if that job no longer exists, to a substantially equivalent position of employment, without prejudice to his seniority or other rights and benefits, and make him whole for any wages including the wage increase withheld from him and other benefits he may have lost as a result of the discrimination against him in accordance with the formula as set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as provided for in *Florida Steel Corporation*, 231 NLRB 651 (1977). (See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).) Additionally, I shall recommend that Respondent be required, on request, to bargain with the Union, and to embody any understanding reached in a signed agreement.

Upon the foregoing findings of fact, conclusions of law, and the entire record pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

## ORDER[4]

The Respondent, Jax Mold & Machine, Inc., Decatur, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating its employees about their union membership, activities, and desires.

(b) Threatening its employees with reprisals if they join or engage in activities on behalf of the Union.

(c) Promising its employees additional benefits if they refrain from joining or engaging in activities on behalf of the Union.

(d) Threatening its employees that it will close its plant if they join or engage in activities on behalf of the Union.

(e) Threatening its employees that it will be futile for them to join or participate in activities on behalf of the Union.

(f) Threatening its employees it will withhold wage increases from them if they join or engage in activities on behalf of the Union.

(g) Threatening employees who engage in activities on behalf of the Union by accusing those employees of causing damage to its property.

(h) Threatening to shoot employees who engage in activities on behalf of the Union.

(i) Promising its employees a pay increase if they vote not to strike.

(j) Threatening its employees that wage increases will be withheld because they engage in activities on behalf of the Union.

(k) Threatening its employees with discharge if they engage in activities on behalf of the Union.

(l) Withholding a wage increase from its employee because of its employee's membership in and activities on behalf of the Union and because its employee gave testimony under the Act.

(m) Discharging employees or otherwise discriminating against them in any manner with respect to their tenure of employment or any term or condition of employment because they engage in activity on behalf of the Aluminum Workers International Union, AFL-CIO, or any other labor organization or because they gave testimony under the Act.

(n) Refusing to recognize and bargain collectively in good faith with the Aluminum Workers International Union, AFL-CIO, as the exclusive representative of its employees in the unit set forth in Conclusions of Law 6, above.

(o) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist the Aluminum Workers International Union, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Offer Doyle E. Pinyan reinstatement to his former or to a substantially equivalent day-shift position of employment, without prejudice to seniority or other rights and privileges, and make him whole in the manner set forth in the remedy section for any loss of pay or other benefits he may have suffered, including the 15-cent-per-hour wage increase withheld from him, by reasons of the discrimination against him.

(b) Recognize and, upon request, bargain in good faith with the Aluminum Workers International Union, AFL-CIO, as the exclusive representative of all employees in the aforesaid appropriate unit.

(c) Post at its Decatur, Alabama, plant copies of the attached notice marked "Appendix."[5] Copies of said

[4] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by

*Continued*

notice, on forms provided by the Regional Director for Region 10 and duly signed by a representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations of the Act not specifically found.

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Order of the National Labor Relations Board" shall read "Posted Pursuant of a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."